

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:
DOROTHY MARIE BYRD,
Debtor(s)

No. 18-11852-t7

**CHAPTER 7 TRUSTEE'S APPLICATION TO
RETAIN BK GLOBAL REAL ESTATE SERVICES
TO PROCURE CONSENTED PUBLIC SALE PURSUANT TO 11 U.S.C. § 327**

COMES NOW the Chapter 7 Trustee, Philip Montoya, and pursuant to 11 U.S.C. § 327, states as follows:

1. Philip Montoya, is the duly qualified and acting Chapter 7 Trustee of the bankruptcy estate of Dorothy Byrd.

2. An asset of the bankruptcy estate is real property located at 10516 Towner Ave NE Albuquerque, NM 87112, and which is legally described as follows:

Parcel Number: 1-021-059-248-229-3-18-15
Census Tract: 350010001.151004
Carrier Route: C018
Abbreviated Description: * 017 111SNOW HEIGHTS

This real property will be hereinafter referred to as the "Real Property".

3. The Debtor has not claimed the Real Property as exempt.

4. The Debtor(s) listed the Real Property on their schedules as having a value of \$160,000.00.

5. The Real Property is subject to the following mortgage(s) or lien(s):

a. First Mortgage Holder: Mr. Cooper in an amount exceeding \$146,667.86;

- b. Second Mortgage Holder: Wells Fargo Home Mortgage in an amount exceeding \$15,384.00

6. Based upon the market value of the Real Property provided by the Debtor(s), the combined first and second mortgage debt is in excess of the market value of the Real Property.

7. The Handbook for Chapter 7 Trustees published by the Executive Office of the United States Trustee, states on pages 4 – 14 under Section 9 “Sales of Assets” (a) General Standards “A trustee may sell assets only if the sale will result in a meaningful distribution to creditors. The Section further states “the trustee may seek a “carve-out” from a secured creditor and sell the property at issue if the “carve-out” will result in a meaningful distribution to creditors. Further, the Section states “The trustee must also consider whether the cost of administration or tax consequences of any sale would significantly erode or exhaust the estate’s equity interest in the asset.”

8. BK Global Real Estate Services (“BK Global”) provides services to trustees as BK Global has expertise and experience in assisting the trustee in negotiating with secured creditors to accomplish the following:

- a. Sell the Real Property under 11 U.S.C. § 363(b) to whichever party the Chapter 7 Trustee determines to have made the best qualified offer with the sale approved by the Court, pursuant to 11 U.S.C. § 363;

b. Obtain the release of the senior mortgage and waive all of its claims against the estate with respect to the Real Property (including any deficiency claims resulting from the proposed sale);

c. Work with the secured mortgage holder to enter into an agreement for an 11 U.S.C. § 506 surcharge to pay all of the closing expenses associated with the § 363 sale, including the payment of a six percent (6%) real estate brokerage commission and reimbursement of their out-of-pocket expenses to BK Global and any associated real estate professional, paid from the proceeds of the sale, and provide a meaningful carve out for the benefit of allowed unsecured creditors of the Debtor(s)' estate; and

d. Make certain the amount of the carve out is clearly set out in the motion to sell the Real Property pursuant to 11 U.S.C. § 363.

9. BK Global will assist the Chapter 7 trustee in negotiations with the first mortgage holder to obtain the consent of the first mortgage holder for the sale of the Real Property. A carve out from the sale proceeds of the Real Property for the payment of a six percent (6%) real estate commission to BK Global and any associated real estate professional, and a carve out from the sale proceeds, such amount for the benefit of unsecured creditors of the bankruptcy estate, which will result in a meaningful distribution to the creditors, and upon a successful resolution with the secured creditor, a separate motion will be filed seeking approval of the settlement terms and conditions.

10. BK Global will not be entitled to any fees if the first mortgage holder does not grant its consent or the Court does not grant the motion to approve the sale of the Real Property.

11. In no event will the bankruptcy estate have any obligation to pay BK Global or associated real estate professional for their services, or to pay the customary title and closing services. The terms of the listing agreement and this Application provide that BK Global and listing agent are only entitled to payment if and when (a) secured creditor grants its consent, (b) the motion to approve sale is granted and (c) the Real Property is sold, in which event BK Global and listing agent will receive a six percent (6%) real estate brokerage commission and obtain reimbursement of any out-of-pocket expenses.

12. The trustee believes that the highest and best value for the Real Property will be generated through a sale in which the Real Property is widely marketed to the public and offered at the highest price that the market will bear. The Trustee further believes that such a sale is in the best interest of the Debtor(s)' bankruptcy estate, but can only be achieved if the secured creditor's consent is first obtained. The Chapter 7 trustee believes that retaining BK Global and/or an associated real estate professional to obtain the secured creditor's consent is in the best interest of the Debtor(s)' bankruptcy estate.

13. The trustee submits that the terms of employment and compensation as set out in this application and the listing agreement (Exhibit "A"), are reasonable in light of the extensive experience of BK Global and any associated real estate professional, and the nature of the services they provide.

14. BK Global attested that it is a disinterested person within the meaning of Section 101(14) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014 and 2016(a). Attached hereto as Exhibit "B" is an Affidavit of Disinterestedness of BK Global. BK Global also attests, pursuant to Bankruptcy Rule 2016, that it shall not split or share its fee with any individual or entity other than listing agent or a buyer's agent, if applicable.

WHEREFORE, based upon the foregoing, the Chapter 7 trustee seeks the Court's authority to retain BK Global in this case and requests that the Court approve the compensation arrangements set forth in the listing agreement and this application, pursuant to Sections 327, 328(a) and 330 of the Bankruptcy Code; and for such other and further relief as the Court determines is appropriate.

Respectfully submitted:

s/Filed electronically

Philip J. Montoya
Counsel for Trustee
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Albuquerque, NM 87102
(505) 244-1152
pmontoya@swcp.com

In accordance with NM LBR 9036-1 and Fed. R. Civ. P. 5(b)(2)(D), this certifies that service of the foregoing document was made this 21st day of November, 2018, via the notice transmission facilities of the case management and electronic filing system of the Bankruptcy Court.

s/Filed electronically

Philip J. Montoya

EXHIBIT A

BK Global Real Estate Brokerage Listing Agreement

This Real Estate Brokerage Listing Agreement ("Agreement") is between

Philip Montoya ("TRUSTEE") and **BK Global Real Estate Services LLC** ("BROKER")

Authority to Sell Property: Trustee gives Broker the right to be the EXCLUSIVE BROKER in the sale of the real and personal property (collectively "Property") described below:

10516 Towner Ave NE Albuquerque, NM 87112

Upon full execution of a contract for sale and purchase of the Property and court approval, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sales contract. **Trustee** and **Broker** acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local law. **Trustee** certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

Price: The starting listing price of the property will be: \$149,900.00. If there are no acceptable offers after 15 days, the list price will be reduced 5% and will reoccur every 15 days until the listing expires or if an acceptable offer is received.

Brokers Obligations: Broker will assist the Trustee to make commercially reasonable efforts to procure the consent and agreement of the senior mortgagee ("Secured Creditor") to:

- a) Sell the Property under 11 U.S.C. § 363(b) to whichever third party you determine to have made the best qualified offer during a public sale approved by the court or agree to 11 U.S.C. § 363(k) and place a credit bid on the Property from the estate;
- b) Release its lien with respect to the Property; and
- c) Agree to a 11 U.S.C. § 506 surcharge to (x) pay our fee and expenses, any commission payable to the local real estate broker and all other fees and expenses associated with the sale, and (y) provide a carve-out for the benefit of allowed unsecured creditors of the estate.

Brokers Duties: Broker duties will include but will not be limited to the following service:

- Researching the real estate, running title and lien searches to identify creditors for resolution and any title issues.
- Advising the trustee of any issues and discuss potential resolutions.
- Conducting the resolutions under the trustee's direction.
- Assisting the trustee in the collection of documents and information for employment.

- Making and identifying the correct contact with the secured creditors.
- Notifying the secured creditor of the upcoming sale and identifying servicer requirements.
- Assisting the trustee in establishing market value and negotiating with the Servicer an acceptable sales price and establishing a carve-out.
- Development of online marketing, email campaign and full nationwide marketing services.
- Conducting an onlinesale.
- Use of the BK Global technology platform.
- Assist the trustee in the review of all offers and coordinate the final documentation of the offer accepted by the trustee.
- Managing contract requirements such as inspections, appraisals and HOA applications.
- Coordinating closings and assisting the trustee in the collection of required information for court filing.
- Closing the transaction and ensure the estate has received the appropriate funds.

Local Listing Brokers Obligations: **Broker** will select a **Local Listing Broker** to co-list the property and provide limited services. **Trustee** will retain both **Broker** and the **Local Listing Broker** to market the Property for sale to the public under a separate listing agreement.

Local Listing Brokers Duties: Local Listing Brokers duties will include but will not be limited to the following services;

- Inspecting the property and completing a broker's price opinion.
- Listing the property in the multiple listing service (MLS).
- Posting a for sale sign in the yard and coordinating showings.

Trustee Obligations: In consideration of **Broker's** obligations, **Trustee** agrees to:

- a) Cooperate with **Broker** in carrying out the purpose of this Agreement
- b) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.
- c) File all court motions and documents in a timely manner to ensure a successful sale.
- d) Advise **Broker** of any special issues or court requirements.

Compensation: 6% Real Estate Commission will be paid out of the proceeds off the sale and is due and paid at closing. The commission will cover the costs of the **Broker, Local Listing Broker** and **Buyers Broker**. The commission will be paid as follows:

- 2% Broker
- 2% Local Listing Broker
- 2% Buyers Broker

Term of Agreement: The term of this Agreement will commence when signed by the **Trustee** and the court approves it. This Agreement will automatically terminate upon the closing of the sale of the Property, or it may be terminated by either party for any or no reason after 180 days from commencement. In addition, this Agreement will be terminated if the **Trustee** files a Report of No


Distribution, files a Notice of Abandonment of the subject property, or submits a Trustee's Final Report to the Office of the United States Trustee.

Broker acknowledges and agrees that (a) the **Trustee** is not executing this Agreement in an individual capacity, but solely as trustee of the estate, (b) **Broker** does not and will not have any right or claim with respect to the estate and (c) **Brokers** sole recourse for payment of real estate commission, fees and expenses will be paid at closing with court approval and under the Consent of the Secured.

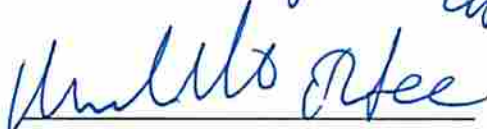
This Agreement constitutes our complete agreement on this matter and supersedes all prior agreements and representations concerning the same. It may not be modified or amended except in a writing signed by both parties.

The effective date of this agreement is November 1, 2018.

BROKER:

By:  Acknowledged and agreed as of the date set forth above.
Patrick Butler, Broker-in-Charge

TRUSTEE:

 Acknowledged and agreed as of the date set forth above.
Philip Montoya, not individually but solely as Trustee in the referenced matter.

Agreed subject to Bankruptcy Court approval.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

Chapter 7

Case No. 18-11852

Debtor

Dorothy Byrd

**DECLARATION OF PATRICK BUTLER IN SUPPORT OF APPLICATION
TO RETAIN BK GLOBAL REAL ESTATE SERVICES TO PROCURE CONSENTED
PUBLIC SALE PURSUANT TO 11 U.S.C. § 327, 328 AND 330**

The undersigned, Patrick Butler ("Declarant") hereby states:

1. I am employed by BK Global Real Estate Services ("Applicant" or "BKRES"), which is an entity duly licensed as a real estate brokerage by the State of Florida located at 1095 Broken Sound Parkway, N.W., Suite 100, Boca Raton, FL 33487. I am Applicant's broker-in-charge and am authorized by Applicant to submit this Declaration on Applicant's behalf in support of the annexed Application to Retain BKRES and in accordance with Bankruptcy Rule 2014.

2. Based upon the information discussed below, I believe that Applicant is a disinterested person and does not hold or represent any interest adverse to the interest of the Debtor's estate as that term is defined in Section 101(14) of the Bankruptcy Code.

3. To the best of my knowledge: (a) neither BKRES nor any of its employees has any connection with the Debtor, its creditors in this case, the Chapter 7 Trustee, the Office of the United States Trustee, or any employees thereof or any party in interest herein; (b) BKRES and each of its employees are "disinterested persons," as that term is defined in Section 101(14) of the Bankruptcy Code; and (c) neither BKRES nor any of its employees hold or represent an interest adverse to the Debtor's estate.

4. A description of the qualifications of, and services provided by, BKRES is attached as Schedule 1.

5. That I have read the application of the Trustee regarding the retention and compensation of BKRES and agreed to be bound by the terms and conditions represented therein.

6. That I further understand that the Court, in its discretion, may alter the terms and conditions of employment and compensation, as it deems appropriate.

Verified under penalty of perjury that the foregoing is true and correct this 26 day of October, 2018.



Patrick Butler
Broker-in-Charge

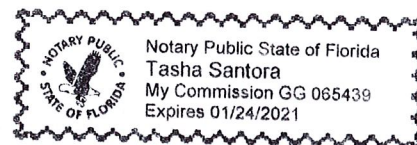
The foregoing instrument was sworn to and subscribed before me this 26 day of October, 2018, by Patrick Butler who provided identification or is personally known to me and who did take an oath.

NOTARY PUBLIC



Notary Public, State of Florida

My Commission Expires



SCHEDULE I

BK Global Real Estate Services is a licensed real estate brokerage by the State of Florida, located at 1095 Broken Sound Parkway N.W., Suite 100, Boca Raton, Florida, 33487.

BK Global Real Estate Services has a strong background and extensive experience in dealing with the mortgage servicing industry and is considered an expert in assisting in the negotiations with secured creditors whose debt is in excess of the market value of the real property and in negotiating short sales.

BK Global Real Estate Services has been providing real estate services to Chapter 7 bankruptcy trustees since 2014.

BK Global Real Estate Services has developed a process to assist Chapter 7 trustees in the sale of over-encumbered real estate to obtain the consent of the secured creditor to allow the Chapter 7 trustee to sell the real property and to assist the Chapter 7 trustee in negotiating a carve out for the bankruptcy estate that will provide a meaningful distribution to the unsecured creditors..

BK Global Real Estate Services is to be retained by the Chapter 7 trustee pursuant to 11 U.S.C. § 327. The first step is for BK Global Real Estate Services to assist the Chapter 7 trustee in obtaining the consent of the secured creditor to allow the Chapter 7 trustee to sell the secured real estate. Those negotiations will include establishing a carve-out of the sale proceeds to the bankruptcy estate that will provide a meaningful distribution to unsecured creditors.

In addition, a carve out will be established to pay a real estate commission to BK Global Real Estate Services and a local real estate licensed broker. In addition, as part of the negotiations, the secured creditor will be required to waive the filing of any deficiency claim.

Once the Court has approved the retention of BK Global Real Estate Services and the local real estate licensed broker, then the real property will be listed for sale at an agreed listing price by the secured creditor.

A motion will be filed to approve the settlement and compromise reached between the Chapter 7 trustee and the secured creditor.

BK Global Real Estate Services has successfully assisted Chapter 7 trustees in 33 court districts in the consented program. BK Global Real Estate Services does this by achieving the highest sale prices for properties as opposed to the more common “discounted sale” often presented to secured creditors by less experienced service providers. The transaction is never consummated unless the carve-out percentage or fee is sufficient to provide a meaningful distribution to unsecured creditors. BK Global Real Estate Services has standards in the mortgage industry whereby all parties can have a mutually beneficial outcome to the sale. The sale of over-encumbered real estate in bankruptcy presents a superior outcome to all parties.

- Unsecured creditors achieve a meaningful distribution on many more bankruptcy cases than they do on 'no asset' cases;
- The Chapter 7 trustee is able to conduct these transactions in a very cost-effective manner substantiating the carve-out amounts generated in these sales; and
- Secured creditors achieve more favorable recovery than they would via foreclosure including minimized compliance risk.

Page 4-2 of the Handbook for Chapter 7 Trustee states that by virtue of 11 U.S.C. § 323(a) the trustee is a representative of the estate. Further, the handbook states, "The trustee is a fiduciary charged with protecting the interest of all estate beneficiaries – namely, all classes of creditors, including those holding secured, administrative, priority and non-priority unsecured claims, as well as the debtor's interest in exemptions and in any possible surplus property."

BK Global Real Estate Services is a licensed Real Estate Broker and acts in the capacity as a licensed agent/broker. As a member of the real estate professional association, BK Global Real Estate Services is permitted to work with local brokers and share fees for work conducted. Section 504(b) of the Bankruptcy Code permits the compensation BK Global Real Estate Services receives for work conducted on a case.

BK Global Real Estate Services has developed a nationwide network of licensed real estate brokers that are trained in the sale of over-encumbered real estate in bankruptcy. BK Global Real Estate Services co-lists the real estate with one of our local trained licensed brokers. The trustee hires both BK Global Real Estate Services and the local broker to perform the required services. The listing commission is split between BK Global Real Estate Services and the local broker.

For these fees, both BK Global Real Estate Services and the local broker share in the duties that are required to conduct a consented sale in bankruptcy.

BK Global Real Estate Services' services include, but are not limited to, the following:

- Researching the real estate, running title and lien searches to identify creditors for resolution and any title issues;
- Advising the trustee of any issues and discuss potential resolutions;
- Conducting the resolutions under the trustee's direction;
- Assisting the trustee in the collection of documents and information for employment;
- Making contact with the secured creditor(s);
- Notifying them of the upcoming sale and identifying servicer requirements;
- Assisting the trustee in establishing market value and negotiating with the servicer an acceptable sales price and establishing a carve-out;
- Development of online marketing, email campaign and full nationwide marketing services;
- Conducting on online sale;

- Use of the technology platform;
- Assist the trustee in the review of all offers and coordinate the final documentation of the offer accepted by the trustee;
- Managing contract requirements such as inspections, appraisals and HOA applications;
- Coordinating closings and assisting the trustee in the collection of required information for court filing; and
- Closing the transaction and ensure the estate has received the appropriate funds.

Local broker services include, but are not limited to:

- Inspecting the property and completing a broker's price opinion;
- Listing the property in the multiple listing service (MLS); and
- Posting a for sale sign in the yard and coordinating showings.

U.S. Bankruptcy Court Districts where BK Global Real Estate Services conducted Consented Sales:

- Eastern District of Arkansas
- Central District of California
- Eastern District of California
- Southern District of California
- District of Colorado
- District of Connecticut
- Middle District of Florida
- Southern District of Georgia
- District of Hawaii
- Northern District of Illinois
- Northern District of Indiana
- Southern District of Indiana
- Western District of Kentucky
- Eastern District of Louisiana
- Middle District of Louisiana
- Western District of Louisiana
- District of Massachusetts
- District of Maryland
- Eastern District of Michigan
- Eastern District of North Carolina
- District of New Jersey
- District of Nevada
- Eastern District of New York
- Northern District of Ohio
- Southern District of Ohio
- District of Oregon

- Eastern District of Pennsylvania
- Middle District of Pennsylvania
- Western District of Pennsylvania
- Northern District of Texas
- Western District of Texas
- Western District of Washington